

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

In re:	:	MDL Docket No. 4:03CV1507-WRW
	:	4:05CV00546
PREMPRO PRODUCTS LIABILITY LITIGATION	:	
	:	
	:	
HELEN HILL	:	PLAINTIFF
	:	
v.	:	
	:	
WYETH, et. al.	:	DEFENDANTS

ORDER

Pending are Defendants' *Daubert* Motion to Exclude Testimony of Dr. James Waldron (Doc. No. 358), *Daubert* Motion to Exclude Testimony That Short-Term Hormone Therapy Use Can Cause Breast Cancer (Doc. No. 81), and Motion for Summary Judgment Re: General Causation (Doc. No. 74). Plaintiff has responded to each.¹

Also pending are Defendants' Motions to Strike Punitive Damages (Doc. Nos. 67, 78). Plaintiff has responded,² and Defendants have replied.³

1. Exclude Testimony of Dr. James Waldron

Dr. Waldron is a diagnostic surgical pathologist who, according to Plaintiff, will give opinions on general causation and the pathology of Plaintiff's breast cancer.⁴ Wyeth argues that Dr. Waldron is a partisan witness (based on mistakes made during his deposition and his testimony in other trials), and that his methodology is flawed because he reviewed only select

¹Doc. Nos. 373, 301, 360, 369.

²Doc. Nos. 145, 148.

³Doc. Nos. 167, 179.

⁴Doc. No. 373.

photographs of pathology slides when he diagnosed Plaintiff's breast cancer type as "mixed-ductal-lobular."⁵

Although interesting, it seems to me that Wyeth's assertions about partisanship are simply fodder for cross-examination. With regard to the methodology of Dr. Waldron's diagnosis, Wyeth contends that Dr. Waldron reviewed only select pictures of pathology slides -- pictures that allegedly supported a preconceived diagnostic result -- when making his diagnosis, and therefore did not follow standard diagnostic practices. However, in both his deposition and subsequent affidavit, Dr. Waldron testified that he diagnosed Plaintiff's breast cancer "based on the full contents" of the pathology slides, rather than pictures of the slides.⁶ That said, I cannot conclude that Dr. Waldron's methodology was flawed. Wyeth's argument regarding the accuracy of these selected photos appears to be more of an admissibility issue of specific exhibits rather than a *Daubert* issue.

Based on the findings of fact and conclusions of law above, Defendant's *Daubert* Motion to Exclude Testimony of Dr. James Waldron (Doc. No. 358) is DENIED.

2. Exclude Testimony That Short-Term HRT Use Can Cause Breast Cancer

Defendants assert that there is "no valid scientific evidence that hormone therapy, when used for less than five years, causes breast cancer," and that the WHI reported a "statistically significant risk of breast cancer only after 5.6 years of use"⁷

However, Plaintiff's experts apparently contend that short-term HRT use can cause breast cancer, and rely on the Million Women Study as supportive authority. Although Defendants

⁵Doc. No. 359.

⁶Doc. No. 373, Exs. 1 and 2.

⁷Doc. No. 82.

refer to many studies that have a different conclusion, this, again, goes to the weight of the evidence and credibility of the experts; such issues are not for me to decide. Furthermore, Defendant's have presented no evidence that the Million Women Study is not a reliable study for Plaintiff's position -- they simply point to other studies that support their position.

Accordingly, Defendants' *Daubert* Motion to Exclude Testimony That Short-Term Hormone Therapy Use Can Cause Breast Cancer (Doc. No. 81) is DENIED.

3. Summary Judgment Re: General Causation

As Defendants point out in their brief, this motion was based on the Motion to Exclude Testimony That Short-Term Hormone Therapy Use Can Cause Breast Cancer. Since that motion was denied, this motion (Doc. No. 74), too, is DENIED.

4. Strike Punitive Damages

Defendants' Motions to Strike Punitive Damages (Doc. Nos. 67, 78) are DENIED without prejudice. These motions may be re-filed closer to the trial date.

IT IS SO ORDERED this 7th day of August, 2008.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE